tions, taxation for the payment of a reward for past military service is valid, being for a "public purpose." The theory is that such a reward is an incentive to patriotism and to patriotic service in the future. See 18 MICH. L. REV. 535. The court said that the payment of money to an individual is not a gift within the meaning of the constitutional limitations, set forth above, if made in recognition of a moral or equitable obligation on the part of the state to the individual. *Munro* v. *State,* 223 N. Y. 208. It held, however, that there was no moral obligation on the part of the state to pay extra compensation to the contemplated beneficiaries, first, because any claim which may exist is a national and not a state obligation, inasmuch as the national government was the sole actor in all matters pertaining to military service; and secondly, because the performance of military service is merely the fulfillment of a citizen's obligation to his country, and hence any compensation over the regular military pay is a mere gratuity. Neither of these reasons seems sound. The court of New York has recognized the state's "moral obligation" to make some sort of recompense to a state employee who was injured through an unforeseen accident while acting in his employment, *Munro* v. *State,* 223 N. Y. 208; to one who had rendered personal services to the state, *Cole* v. *State,* 102 N. Y. 48; to volunteer firemen who had served for a long time without pay, *Trustees of Exempt Firemen's Benev. Fund* v. *Roome,* 93 N. Y. 313; to one whose land was reduced in value by a change of the grade of a street, made under state authority. *In re Borup,* 182 N. Y. 222. Is the case of the service man substantially different? Judge Cardozo, dissenting, said: "Their service has been coupled with sacrifice, and from the two there is born the equity that prompts to reparation." There would seem to be a pressing obligation to distribute the burden of these pecuniary losses more equitably over society, to give a proportionate share to those who remained at home reaping the harvest of war wages and war profits. Does the obligation rest solely upon the national government? See *State* v. *Clausen* (Wash., 1921), 194 Pac. 793, to the effect that the state has a moral obligation to compensate for military services rendered to the federal government. See also *Second Employers' Liability Cases,* 223 U. S. 1, 38 L. R. A. (N. S.) 44; *Halter* v. *Nebraska,* 205 U. S. 34; *State* v. *Handlin,* 38 S. D. 550. According to its own statement, the court was not forgetful of the rule that if there is any reasonable ground for the legislative decision that a moral obligation exists the court cannot interfere. *U. S.* v. *Realty Co.,* 163 U. S. 427; *Opinion of the Justices,* 175 Mass. 599.

CONSTITUTIONAL LAW—SEARCH AND SEIZURE—SELF-INCRIMINATION.—Some detectives employed by a private corporation searched the petitioner's office and seized his books and papers. These were turned over to the Attorney General's office to be used as evidence in a prosecution of the petitioner for fraudulent use of the mails. The district court had ordered the return of the books and papers, although the court stated that the possession of the stolen property was not the result of any unlawful act on the part of anybody representing the government of the United States. Upon appeal by the agent of the Attorney General, *held,* that the retention

of this evidence violated neither the Fourth nor the Fifth Amendments to the Constitution. *Burdeau* v. *McDowell* (1921), 41 Sup. Ct. Rep. 574.

The court said that while the petitioner would have a clear right of action against those who wrongfully took his property, still the Fourth Amendment was not involved, because it was intended as a restraint only upon governmental agencies. The mere retention of the evidence did not make the government guilty of a wrongful search and seizure. This question seems not to have been decided before. Previous cases involving the search and seizure amendment were concerned with an actual taking by some governmental authority, and the questions raised were whether the acts were unreasonable or whether they were authorized by the person whose property was taken. In one case certain letters were taken by two Chinese witnesses for the government in a federal prosecution. It was held that there was not an unlawful search and seizure, because the letters were not addressed to the defendant from whom it was claimed that they were taken unlawfully. But the question whether these witnesses were government agents was not discussed, as it seems it might have been. *Moy Wing Sun* v. *Prentis,* 234 Fed. 24. The Fourth Amendment does not expressly confine the security of the persons, houses, papers and effects of people to security against unreasonable searches and seizures by government officers, although it does prescribe the manner of issuing warrants for searches and seizures which shall be regarded as lawful. But this interpretation appears reasonable when it is remembered that the origin of this constitutional provision was the abuse of executive authority. COOLEY, CONSTITUTIONAL LIMITATIONS (Ed. 6), p. 364 ff.

The court held that the Fifth Amendment was not violated by the retention of the evidence, when the government had no part in the unlawful taking. The reason assigned was that the government could require the production of this evidence by subpoena, when informed of its existence in the hands of a third person, and the petitioner could not regain its possession. However, when there has been an unlawful search and seizure, it now appears settled that the owner of books and papers wrongfully seized can recover them in a timely and direct proceeding, although the views expressed in *Adams* v. *New York,* 192 U. S. 585, threw some doubt upon this right. See 20 MICH. L. REV. 93, 108. And in *Silverthorne Lumber Co.* v. *United States,* 251 U. S. 385, it was held that the government could not subsequently acquire evidence by subpoena if its knowledge of its existence was derived from its wrongful search and seizure. The principal case decides that the government may retain the incriminating evidence if it is but a step removed from the wrongdoer. And it is not necessary that the evidence should have been acquired by regular subpoena process. Justices Brandeis and Holmes dissented on the ground that the lack of regular process in acquiring the evidence placed government officials in an exceptional position before the law, and such irregularity would not encourage respect for law and government. It may be that this consideration will induce the Supreme Court to change from its position in the principal case, as it seems to have done in that taken in the *Adams* case.